



## STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2009-06

Board of Zoning Appeals Hearing: Monday, March 30, 2009

**Applicant:** Sham Syad  
Atlanta Best Deals, LLC  
1745 Roswell Road  
Marietta, GA 30062

**Property Owner:** Sham Syad  
Atlanta Best Deals, LLC  
1745 Roswell Road  
Marietta, GA 30062

**Address:** 1745 Roswell Road

**Land Lot:** 11700      **District:** 16      **Parcel:** 0040

**Council Ward:** 7      **Existing Zoning:** CRC (Community Retail Commercial)

### Special Exception / Special Use / Variance(s) Requested:

1. Variance to allow paved parking within a required buffer area. [Section 710.05.B]
2. Variance to reduce the minimum drive aisle width from 20 feet to 14 feet. [Section 716.08.C.5]

### **Statement of Fact**

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

**Criteria:**

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

**PICTURES**



Concrete pad encroachment within buffer area, and adjacent apartment complex





Existing drive aisle access to rear of property



Rear of property

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**Recommended Action:**

**Denial in part.** The applicant, Sham Syad, is requesting variances to allow encroachment with a required buffer area and a reduction of the minimum drive aisle width for the property located at 1745 Roswell Road. The applicant is requesting these variances in order to add additional storage areas for car inventory in the rear of the property. The applicant maintains a used car business, Georgia Best Car Deals, on the property. Adjacent properties along Roswell Road are zoned CRC (Community Retail Commercial); however, the property to the north is zoned PRD-MF and contains an apartment complex. A townhome subdivision, zoned RA-8, is located across Roswell Road.

Since 2007, there have been numerous and repetitive code violations on the property, including obnoxious debris, noise, performing mechanical work outdoors, and illegally installing concrete pads in both the front and side yards. Code enforcement records indicate that residents of the apartment complex next door have made several complaints. In July of 2007, Code Enforcement issued a citation for vehicles parked on grass or dirt. Subsequently, two large concrete pads were installed without permits in order to allow more storage of car inventory. One of the pads, located in the side yard, is within the required 40 foot residential buffer for the existing apartment complex.

The applicant has site plans currently under review that propose to add additional pavement in the rear yard for more car storage. Part of the proposed pavement is within the residential buffer as well. Since the use is being expanded in the rear yard, the Fire Department is required to have adequate access to existing buildings located in the rear. The code requires 20 feet of drive aisle width in order to provide two-way access. The existing driveway is approximately 11 feet wide, and there is insufficient room between the existing structure and the western property line to install the required 20 foot pavement width. However, the drive aisle could be widened up to 14 feet in order to provide passable fire access. Fire Department staff has commented that this requirement would not be necessary if the structures in the rear yard were removed.

Staff recommends the *denial* of the variance request to allow encroachment in the required buffer area since the history of complaints from neighbors have demonstrated a clear need for an appropriate buffer from commercial activities. Granting approval would be detrimental to property and improvements in the vicinity of the development site, and to the public health, safety, or general welfare. Further, the applicant should re-establish the buffer to protect the adjacent property owners. *(Should this variance be approved to reduce the width of the buffer, staff recommends the following stipulation: A reduced buffer must be planted, subject to the review and inspection by the City Arborist, and approval of the Director of Development Services.)*

Staff recommends *approval* of a variance to reduce the minimum drive aisle width. The existing layout of the site does impose a hardship on the property owner since the maximum pavement width possible between the front structure and side property line is 14 feet. Granting approval will not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.